REMARKS

Claims 1-22 are pending in the Application.

Claims 1-22 stand rejected.

I. REJECTION UNDER 35 U.S. § 102

Claims 1, 5, 7, 9, 11, 12, 16, 18 and 19 have been rejected under 35 U.S. § 102 as being anticipated by *Bereiter*, U.S. Patent No. 5,754,763. The Applicants respectfully traverse the rejection of claims 1, 5, 7, 9, 11, 12, 16 18 and 19 under 35 U.S.C. § 102.

Claim 1 is directed to a data processing system for bulk data transfer. The system includes a source data processing system for distributing data to one or more target data processing systems, and one or more fan-out nodes for transferring the data between the source system and each of the one or more target data processing systems and transferring result information between the one or more target data processing systems and a preselected set of one or more data processing systems for managing data distribution. *Bereiter* allegedly teaches all of the limitations of claim 1. (Paper No. 3, page 3; Paper No. 5, page 2.) The Applicants respectfully disagree.

As an initial matter, *Bereiter* is directed to the auditing of licensed program usage in a matter that does not increase management overhead and that may be carried out without user involvement. (*Bereiter*, column 1, lines 7-10.) With respect to the limitation in claim 1 reciting a source data processing system for distributing data to one or more target data processing systems, *Bereiter* purportedly teaches this element of claim 1 in disclosing computing resources organized into one or more managed regions, each region being managed by a management server servicing one or more gateway machines and each gateway machine servicing a plurality of endpoint machines. (Paper No. 3, page 3; Paper No. 5, page ) (citing *Bereiter*, column 2, lines 16-65.) This limitation of claim 1 is allegedly further disclosed in teaching in *Bereiter* directed to geographically disbursed nodes in an overall environment managed in a distributed manner, with the managed environment logically broken down into a series of loosely connected managed regions each with its own management server for managing local resources; the network may also include other servers for carrying out

other distributed network functions such as name server, security servers, file servers, etc. (Paper No. 3, page 3) (citing *Bereiter*, column 4, lines 17-21.) These teachings in *Bereiter*, by their express terms, do not disclose a source data processing system for distributing data to one or more target data processing systems. This will be discussed further hereinbelow.

With respect to the limitation reciting one or more fan-out nodes for transferring data between the source system and one or more target data processing systems, and transferring result information to a preselected set of one or more data processing systems for managing data distributions, the Examiner identifies teaching in *Bereiter* drawn to the geographically disbursed nodes in an environment that is managed in a distributed manner, preferably broken down into a series of loosely connected managed regions each with its own management server. (Paper No. 3, page 3) (citing *Bereiter*, column 4, lines 6-21.) The Examiner further identifies teaching in *Bereiter* disclosing that a network may typically include other servers such as name servers, etc. and multiple servers coordinate activities across the enterprise and permit remote site management and operation, each server serving a number of gateway machines each of which in turn supports a plurality of endpoints, in which the server coordinates all activities within the managed regions using a terminal node manager. (Paper No. 3, page 3) (citing *Bereiter*, column 3, lines 6-21.) Again, these teachings do not explicitly disclose one or more fan-out nodes for transferring data between the source system and each of one or more target data processing systems, and transferring result information to a preselected set of one or more data processing system for managing data distributions. As previously noted, *Bereiter* is directed to a system for managing licenses of deployed software, not data distributions. As the Applicants' attorney noted in the aforementioned teleconference, *Bereiter* expressly discloses that each of the endpoint machines includes a client component which is a low cost low maintenance application that is "dataless" in the sense that system management data is not cached or stored in a persistent manner on the client. (*Bereiter*, column 4, lines 36-42.) Thus, interpreting *Bereiter* to teach a system for distributing data to one or more target data processing systems would be inconsistent with the express teaching in *Bereiter*. In other words, it is illogical for *Bereiter* to teach a source data processing system for distributing data to one or more targets. The

consequence would be that a source data processing system would distribute data to a target that then simply throws it away. Thus, it is not surprising that *Bereiter* does not teach the invention of claim 1.

Anticipation requires that a single prior art reference teach the identical invention of the claim. MPEP § 2131. For at least the aforesaid reasons, the Applicants respectfully contend that *Bereiter* does not teach the identical invention of claim 1. Thus, claim 1 is allowable under 35 U.S.C. § 102 over *Bereiter*.

Claim 5 depends from claim 1 and recites the system thereof in which source data processing system distributes the data in response to a request from at least one of the target data processing systems. Claim 5 is rejected on disclosure in *Bereiter* discussing secure remote procedure calls used to invoke operations on remote objects, gateway machines including an operating system and a threads mechanism, and client components on each of the endpoint machines that are low cost low maintenance applications that are preferably dataless. (Paper No. 3, page 3; Paper No. 5, pages 2-3.) (citing *Bereiter*, column 4, lines 32-41.) These teachings of *Bereiter*, by their express terms, do not disclose a source data processing system distributing data in response to a request from at least one target data processing system. Therefore, *Bereiter* has not been shown to anticipate claim 5. *See* MPEP § 2131. Consequently, claim 5 is allowable under 35 U.S.C. § 102 over *Bereiter*.

Claim 7 is directed to the system of claim 6 in which the request (recited in claim 5 from which claim 6 depends) comprises a list of target data processing systems to receive the data, an identifier of a method by which the target machines will receive and process the data, and an identifier of a notification method by which the result information from each endpoint system will be received by the preselected set of one or more data processing systems for managing data distributions. As an initial matter, the Applicants note that claim 7 incorporates the limitations of claim 6 by reference, as a dependent claim depending therefrom. 37 C.F.R. § 1.75(c). Claim 6 has not been rejected as being anticipated by *Bereiter*. (Claim 6 has been rejected under 35 U.S.C. § 103, as discussed hereinbelow.) A necessary condition that claim 7 be anticipated is that

claim 6 is anticipated. Consequently, claim 7 is not anticipated by *Bereiter*. The express limitation of claim 7 will be addressed hereinbelow in conjunction with claims 12 and 19.

With respect to claim 9, claim 9 is directed to a method for distributing data including the steps of transferring the data via a first set of one or more fan-out nodes to one or more endpoint systems, and transferring results information via a second set of the one or more fan-out nodes from the one or more endpoint systems to a preselected set of one or more data processing systems for managing data distributions. The results information is generated in response to the step of transferring the data. Claim 9 has been rejected on teaching in *Bereiter* that discusses transparent gateways, and a management environment broken down in a series of loosely-connected managed regions each with its own management server, previously discussed hereinabove in conjunction with, *inter alia*, claim 1. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 4, lines 6-21 and column 6, lines 32-41.) Additionally, the Examiner relies on discussion in *Bereiter* directed to the execution of management tasks in which an object supported on one machine, such as an endpoint, invokes an object located on the second machine, such as a gateway, or *vice versa*. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 8, lines 48-52.) Thus, the teaching in *Bereiter* referred to by its express terms, does not disclose transferring data, as recited in claim 9, and transferring results information via the second set of the one or more fan-out nodes . . . , in response to the step of transferring the data. Indeed, as the Applicants have previously noted, *Bereiter* particularly discloses that the endpoint systems are low cost low maintenance applications that are dataless, that is, without persistent storage. (*See Bereiter* column 4, lines 39-42.) Because, for at least the aforesaid reasons, the Applicants respectfully contend that *Bereiter* is allowable under 35 U.S.C. § 102 over *Bereiter*. Additionally, claim 16, directed to a computer program product in a machine-readable storage medium including programming comprising instructions for performing operations paralleling the method steps of claim 9 has been rejected on the same ground as claim 9. (Paper No. 3, page 3; Paper No. 5, page 3.) For at least the reasons discussed in conjunction with claim 9, the Applicants also respectfully contend that claim 16 is not anticipated by *Bereiter*, and is, thus, allowable under 35 U.S.C. § 102 over *Bereiter*.

Claim 11 depends from claim 9 and recites the method thereof in which the step of transferring the data is performed in response to a request received from an application on at least one of the plurality of endpoints. Claim 11 has been rejected on disclosure in *Bereiter* discussing the components of a generic CORBA implementation. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 7 lines 30-38.) The disclosure teaches, for example, that in the CORBA implementation, a client is a requester of the service that is provided by an object implementation in which an Object Request Broker (ORB) delivers the request from the client and the object implementation then performs a requested service and the data returned back to the client. (*Bereiter*, column 7, lines 30-38.) Consequently, because *Bereiter* does not teach the identical invention of claim 11, it does not anticipate claim 11. Therefore, the Applicants respectfully contend that claim 11 is allowable under 35 U.S.C. § 102 over *Bereiter*. Additionally, claim 18 directed to a computer program product including instructions for performing operations paralleling the method step of claim 11 has been rejected on the same basis as claim 11. (Paper No. 3, page 4; Paper No. 5, page 3.) Consequently, claim 18 is also allowable under 35 U.S.C. § 102 for at least the reasons discussed in conjunction with claim 11.

Claim 12 depends from claim 11 and recites the method thereof in which the request (recited in claim 11) includes a list of target data processing systems to receive the data. The request also includes an identifier of a method by which the target machines will receive and process the data, and an identifier of a notification method by which the result information from each input system will be received by the preselected set of one or more data processing systems from managing data distributions. Claim 12 has been rejected over disclosure in *Bereiter* that discusses secure remote procedure calls used to invoke operations on remote objects. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 4, lines 32-36). Additionally, the Examiner relies on disclosure in *Bereiter* teaching a process in which information flow begins when an administrator selects an icon or interacts with the dialog, and information is then sent to the desktop, usually located at a gateway at which time an application callback method is invoked. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 6, lines 55-63). This teaching also discusses the callback method

invoking core application methods which communicate with the application objects to perform some system management operation, any return information or state being passed back. (*See Bereiter*, column 6, lines 55-63.) Additionally, the aforementioned teaching directed to generic CORBA implementations, and the interaction between two ORBS when an object on one machine invokes an operation on an object on a remote machine is referred to. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 7, lines 32-38 and column 8, lines 2-6). Again, the express teaching of the reference does not disclose a list of target data processing systems to receive the data, nor an identifier of a method by which the target machines will receive and process data. In sum, the teachings relied upon disclose generic remote procedure calls within a CORBA environment. Additionally, *Bereiter* is said to disclose the identifier of a notification method by which the result information from each endpoint system will be received by the preselected set of one or more data processing systems for managing data distributions by, at least implicitly, teaching that when a method completes the results are passed back to the ORB on the remote machine which returns them to the ORB on the machine invoking the operation on the remote machine, and the results are delivered to the invoking object. (Paper No. 3, page 4; Paper No. 5, page 3) (citing *Bereiter*, column 8, lines 13-18). Thus, there is no express teaching of an identifier of a notification method by which result information from each endpoint system will be received by the preselected set of one or more data processing systems for managing data distributions.

To show that the limitation is implicitly taught, an examiner must provide a rationale or evidence that the result or characteristic is necessarily present in the thing described in *Bereiter* and that it would be so recognized by persons of ordinary skill. MPEP § 2112. Furthermore, this may not be established by probabilities or possibilities; the mere fact that a certain thing may result from a given set of circumstances is not sufficient. MPEP § 2112.

Thus, the Applicants respectfully contend that *Bereiter* has not been shown to teach the identical invention of claim 12, explicitly or inherently, and, therefore, claim 12 is not anticipated by *Bereiter*. Claim 12 is thus allowable under 35 U.S.C. § 102 over *Bereiter*. Additionally, claim 19 has been rejected on the same basis as claim 12. (Paper No. 3, page 4; Paper No. 5, page 3.)

Claim 19 is directed to a program product and recites a limitation paralleling the limitations of claim 12. For at least the reasons discussed in conjunction with claim 12, the Applicants respectfully assert that claim 19 is also allowable under 35 U.S.C. § 102 over *Bereiter*.

II. REJECTION UNDER 35 U.S.C. § 103

Claims 2, 6, 10 and 17 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Bereiter* in view of *Fujino, et al.*, U.S. Patent No. 6,085,222 ("*Fujino*"). The Applicants respectfully traverse the rejection of claims 2, 10 and 17 under 35 U.S.C. § 103.

Claim 2 depends from claim 1 and recites the system thereof in which each of the one or more fan-out nodes is operable for caching at least a portion of the data distribution and at least a portion of the result information. *Bereiter* admittedly fails to teach the limitation of claim 2. Additionally, for the reasons discussed hereinabove in conjunction with line 1, the Applicants also respectfully submit that *Bereiter* fails to teach one or more limitations of claim 2 incorporated by reference therein for the dependency in claim 1. The Examiner relies on *Fujino* as teaching the admittedly missing limitation in claim 2. (Paper No. 3, page 5; Paper No. 5, page 4.) *Fujino* is directed to a distributed communication system with adaptive data sending control in a computer network. (*Fujino*, column 1, lines 1-4.) Claim 2 has been rejected on teaching in *Fujino* discussing a caching function in a gateway nearest the client so that useless communications can be reduced more. (Paper No. 3, page 5; Paper No. 5, page 4) (citing *Fujino*, column 6, lines 4-11). Thus, the teaching in *Fujino* directed to caching in a gateway does not disclose caching a portion of a data distribution and at least a portion of result information. The Examiner further concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the use of a gateway to cache data and result information in the system of *Bereiter* to allow data to be quickly accessed by the end user or host. (Paper No. 3, page 5; Paper No. 5, page 4.)

The Applicants respectfully disagree with the assertion as to obviousness for several reasons. There is no reason to engraft caching into the system of *Bereiter*, suggested in one of the possible sources thereof. *See* MPEP § 2143.01. Indeed, to the contrary, *Bereiter* is directed to a mechanism

for auditing licensed program usage in a distributed computer environment. (*Bereiter*, column 1, lines 1-9.) There is nothing in *Bereiter* to suggest that the volume of management data is sufficient to warrant caching. Moreover, the teaching in *Bereiter* referring to caching discloses that the client component is a low cost low maintenance application that is dataless in the sense that system management data is not cached or stored there in a persistent manner. (*Bereiter*, column 4, lines 39-42) (emphasis added). The Applicants have found no other reference to caching in *Bereiter*. Thus, to the extent of the aforementioned teaching at least, *Bereiter* teaches away from caching. Additionally, a teaching or suggestion to combine or modify references must be clear and specific, and broad conclusory statements regarding the teachings of the references are not sufficient. *In re Lee*, 277 F.3d, 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1616 (Fed. Cir. 1999). Thus, for at least the reasons that the references alone or in combination do not teach or suggest all of the limitations of claim 2, and because there is no sufficient suggestion or motivation for modifying or combining the references, the Applicants respectfully contend that a *prima facie* showing of obviousness has not been made. Consequently, claim 2 is allowable under 35 U.S.C. § 103 over *Bereiter* and *Fujino*.

Additionally, claims 6, 10 and 17 have been rejected on the same basis as claim 2. (Paper No. 5, page 4.) Claim 6 is directed to the system of claim 5 in which a preselected one of the one or more data processing systems for managing data distributions enqueues the request in a database. The limitations of claim 6 have not been addressed at all in the light of the asserted teachings of *Bereiter* and *Fujino*. Consequently, the Applicants respectfully assert that a *prima facie* showing of obviousness has not been made with respect to claim 6, and therefore claim 6 is allowable 35 U.S.C. § 103 over *Bereiter* and *Fujino*. (The Applicants not that claim 6 had previously been rejected over the combination of *Bereiter* and *Chang et al.* *See* Paper No. 3, page 7.) With respect to claims 10 and 17, each recite an express limitation that parallels the limitation of claim 2. For at least the reasons discussed above in conjunction with claim 2, the Applicants also respectfully assert

that a *prima facie* showing of obviousness has not been made with respect to claims 10 and 17. Therefore, these claims are also allowable under 35 U.S.C. § 103 over *Bereiter* in *Fujino*.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 3, 14 and 21 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Bereiter* in view of *Nemirovsky, et al.* (U.S. Patent No. 6,477,562) ("*Nemirovsky*"). The Applicants respectfully traverse the rejection of claims 3, 14 and 21 under 35 U.S.C. § 103.

Claim 3 is directed to the system of claim 1 in which a data distribution has a preselected priority. The preselected priority is operable for determining an availability of resources for transferring of the data and the transferring of the result information. *Bereiter* admittedly fails to teach or suggest the limitation of claim 3. (Paper No. 3, page 5; Paper No. 5, page 5.) *Nemirovsky* is relied upon as teaching the missing limitation. (*Id.*) However, *Nemirovsky* is directed to digital microprocessors and in particular to microprocessors operating with multiple processing streams. (*Nemirovsky*, column 1, lines 1-10.) *Nemirovsky* does not address data transfer over a network. Indeed the teaching relied upon in *Nemirovsky* discloses that each stream in a multi-streaming processor is assigned a priority representing the associated streams claimed processing resources relative to competing *instruction streams*. (*Nemirovsky*, column 5, line 60 through column 6, line 2) (emphasis added). The Examiner has provided no rationale whatsoever establishing the relevance of *Nemirovsky* to the invention of claim 3. *See* 37 C.F.R. § 1.104(c)(2). Consequently, the teaching in *Nemirovsky* neither discloses or suggests a data distribution having a preselected priority, the preselected priority operable for determining an availability of resources. Additionally, reliance on implicit teaching requires that objective evidence be provided that demonstrates that the inherent characteristic is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. MPEP § 2112. No such evidence has been provided.

Additionally, a *prima facie* showing of obviousness requires that there be some motivation or suggestion to combine or modify the references to make the claimed invention. MPEP § 2143.01. The Examiner concludes that it would have been obvious to incorporate a priority record in

*Bereiter's* system issuing priority to data in order to give priority to the resources. (Paper No. 3, page 6; Paper No. 5, page 6.) However, such a motivation is not found in one of the three possible sources thereof on the teachings of the references themselves, the knowledge of persons of ordinary skill in the art or the nature of the problem to be solved. Moreover, there is no rationale provided for explaining how a priority scheme for prioritizing instruction streams in a multithreaded processor may be engrafted into a mechanism for auditing software resources in a distributed computing environment. The two are unrelated. Moreover, as discussed hereinabove, such broad statements regarding the teachings of multiple references are not evidence, and do not support a *prima facie* showing of obviousness. *In re Lee*, 277 F.3d at 1433, 61 U.S.P.Q.2d at 1433-34; *In re Kotzab*, 217 F.3d at 1371, 55 U.S.P.Q.2d at 1317; *In re Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2d at 1616.

Consequently, for at least these reasons, the Applicants respectfully contend that a *prima facie* showing of obviousness has not been made. Therefore, claim 3 is allowable under 35 U.S.C. § 103 over *Bereiter* and *Nemirovsky*.

Claim 14 is directed to a method of claim 13 and further including the step of determining an availability of a network connection for transferring of results information in response to one of the preselected set of priority values. Claim 14 has been rejected in view of *Nemirovsky* allegedly teaching, at least implicitly, the limitations thereof. (Paper No. 3, page 6; Paper No. 5, page 5.) However, as discussed in conjunction with claim 3, the teaching in *Nemirovsky* does not address the determination of an availability of a network connection based on a selected set of priority values. The Examiner provides no rationale explaining how the teaching in *Nemirovsky* may be incorporated in *Bereiter*, concluding that it would have been obvious to do so to allow the network to process responses in a timely and efficient manner. (Paper No. 5, page 5.) Again, the Applicants respectfully contend that such broad conclusory statements are not sufficient to sustain a *prima facie* showing of obviousness. Therefore, because the references, alone or in combination fail to teach or suggest all of the limitations of claim 14, and because no motivation sufficient to sustain a *prima facie* showing obviousness has been identified in one of the possible sources thereof, the Applicants respectfully contend that claim 14 is allowable under 35 U.S.C. § 103 over *Bereiter* and *Nemirovsky*.

Additionally, claim 21 has been rejected on the same ground as claim 14. Claim 21 is directed to a program product and further including instructions for performing operations paralleling the limitations of claim 14. For at least the reasons discussed in conjunction with claim 14, the Applicants also respectfully contend that claim 21 is allowable under 35 U.S.C. § 103 over *Bereiter* and *Nemirovsky*.

IV. REJECTION UNDER 35 U.S.C. § 103

Claim 4 has been rejected under 35 U.S.C. § 103 as being unpatentable over *Bereiter* in view of *Minear, et al.*, U.S. Patent No. 5,983,350 ("*Minear*"). The Applicants respectfully traverse the rejection of claim 4 under 35 U.S.C. § 103.

Claim 4 is directed to the system of claim 1 in which the one or more fan-out nodes comprises a plurality of fan-out nodes, and wherein the transferring of the data comprises receiving data from the source data processing system by a first fan-out node, sending data to a second fan-out node, and sending the data from the second fan-out node to one or more of the target data processing systems. *Bereiter* admittedly fails to disclose the limitations of claim 4. (Paper No. 3, page 7; Paper No. 5, page 6.) *Minear* allegedly discloses the limitation of claim 4. *Id.* The Applicants respectfully disagree.

*Minear* is directed to systems and methods for securely transferring information between firewalls over an unprotected network. (*Minear*, column 1, lines 1-11.) In other words, *Minear* does not address the limitations of claim 4. For example, one of ordinary skill in the art would recognize that a firewall is a combination of hardware and software which limits the exposure of a computer or a group of computers to an attack from outside. *See, e.g.*, NEWTON'S TELECOM DICTIONARY 281 (2001). Thus, the Applicants respectfully assert that the references, alone or in combination, do not teach or suggest all of the limitations of claim 4. With respect to a motivation for combining or modifying the references, the Examiner asserts that it would have been obvious to incorporate a second gateway in *Bereiter's* system to allow data to be quickly accessed by the end-user or host. (Paper No. 3, page 7.) However, as discussed above, the firewalls of *Minear* are not fan-out nodes. Moreover, the motivation or suggestion to modify the reference must be clear and particular, and

be found in one of the possible sources thereof, not in the Application itself. *See, e.g., In re McLaughlin*, 443 F.2d 1392, 1395, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971) (stating that a motivation must not rely on knowledge gleaned only from the Applicants disclosure). Thus, for at least these reasons, the Applicants respectfully contend that a *prima facie* showing of obviousness has not been made with respect to claim 4, and claim 4 is allowable under 35 U.S.C. § 103 over *Bereiter* and *Minear*.

V. REJECTION UNDER 35 U.S.C. § 103

Claim 8 has been rejected under 35 U.S.C. § 103 as being unpatentable over *Bereiter* in view of *Chang et al.*, U.S. Patent No. 5,367,643 ("*Chang*"). The Applicants respectfully traverse the rejection of claim 8 under 35 U.S.C. § 103.

Claim 8 depends from claim 6 and recites the system thereof in which the request is assigned a preselected distribution priority and the request is enqueued in accordance with the preselected distribution priority. (Claim 6 is directed to the system of claim 5 in which a preselected one of the one or more data processing systems for managing data distributions enqueues the request in a database.) *Bereiter* admittedly fails to teach the limitation of claim 8. (Paper No. 3, page 8; Paper No. 5, page 7.) *Chang* is directed to a generic high bandwidth adapter having data packet memory for temporary storage of variable length data packets thereby providing a data interface between system buses, switching fabrics, transmission media and a variety of LANs. (*Chang*, column 1, lines 1-17.) *Chang* allegedly teaches the limitation of claim 8 in *Chang* in disclosing that the adapter organizes packets into queues, each queue comprising a linked list of data packets having a given priority level and destined for the same logical input/output port or to be processed in a similar manner by a processor subsystem, the queues organized into a queue set for each input/output port. (Paper No. 3, page 8; Paper No. 5, page 7) (citing *Chang*, column 5, lines 10-25). The Examiner also refers to teaching in *Chang* that discloses that each input/output port examines the contents of incoming data packets and determines the proper queue into which the data packet should be enqueued. (Paper No. 3, page 8; Paper No. 5, page 7) (citing *Chang*, column 5, lines 33-36). With respect to the queues in *Chang*, *Chang* further discloses that a queue is a list of packets stored in

sequence whereby a packet can be enqueued either from the queue head or from the queue tail and that a generic adapter manager (GAM) has a queue control block for every queue in the adapter. (*See, e.g.*, Paper No. 3, page 8; Paper No. 5, page 7) (citing *Chang*, column 19, lines 21-33). Additionally, the Examiner relies on teaching in *Chang* disclosing that users of services send a current request for the services to a manager with a current request defining a specified address in a memory of the manager and wherein the manager has previously prepared responses to anticipated request for services and stored the responses at specified addresses in its memory, the manager sending, a response which had been previously prepared and stored at the specified address in response to the current request. (Paper No. 3, page 8; Paper No. 5, page 7) (citing *Chang*, column 19, lines 21-33). Again, the express teaching of *Chang* referred to does not disclose or suggest the limitations of claim 8, by their plain terms, and no rationale evidencing that the limitations are inherent in *Chang* has been provided. With respect to a motivation for modifying or combining the references, it is contended that it would have been obvious to include one or more data processing systems enqueuing the request in a database to allow request to be removed in the same order they were entered. (Paper No. 3, page 8; Paper No. 5, page 7.) However, as previously discussed, a motivation or suggestion to modify a reference must be found in the references themselves, the nature of the problem to be solved, or the knowledge of persons of ordinary skill in the art. None of these sources has been identified as the source of the motivation for combining *Bereiter* and *Chang* to make the invention of claim 8. Because, for these reasons, the references alone or in combination have not been shown to teach or suggest all of the limitations of claim 8, nor has a motivation upon which a *prima facie* showing of obviousness may be predicated been provided, the Applicants respectfully assert that claim 8 has not been shown to be *prima facie* obvious in view of *Bereiter* and *Chang*. Consequently, claim 8 is allowable under 35 U.S.C. § 103 over *Bereiter* and *Chang*.

VI. REJECTION UNDER 35 U.S.C. § 103

Claims 13, 15, 20 and 22 have been rejected under 35 U.S.C. § 103 as being unpatentable over *Bereiter* in view of *Fujino* and in further view of *Nemirovski*. The Applicants respectfully traverse the rejection of claims 13, 15, 20 and 22 under 35 U.S.C. § 103.

Claim 13 is directed to the method of claim 10 and further including the steps of assigning one of a preselected set of priority values to each data distribution, and determining an availability of a network connection for the step of transferring the data in response to the one of the preselected set of priority values. *Bereiter* and *Fujino* are relied upon as teaching the limitations of claim 13 incorporated therein through its dependency on claim 10. As an initial matter, as discussed hereinabove in conjunction with, *inter alia*, claim 10, the Applicants respectfully disagree that these limitations have been shown to be taught or suggested by *Bereiter* in view of *Fujino*. Moreover, the express limitation of claim 13 is admittedly missing in *Bereiter* and *Fujino*. (Paper No. 3, page 9; Paper No. 5, page 8.)

The Examiner relies on the discussion in *Nemirovsky* discussed hereinabove in conjunction with, *inter alia*, claim 3 as disclosing, at least implicitly, the limitations of claim 13. (Paper No. 5, page 8.) For the reasons discussed in conjunction with claim 3, the Applicants respectfully contend that the teachings in *Nemirovsky* have not been shown to teach either explicitly or implicitly, the limitations of claim 13. In sum, *Nemirovsky* is directed to a system for assigning priorities associated with an instruction stream relative to competing instruction streams in a multi-streaming processor. (*Nemirovsky*, column 5, lines 61 through column 6, line 2.) Thus, neither *Bereiter*, *Fujino* or *Nemirovsky*, alone or in combination, teach or suggest all of the limitations of claim 13. With respect to a motivation for modifying or combining the references, the Examiner asserts that it would have been obvious to make the invention of claim 13 to allow data to be processed in a timely and efficient manner according to their priority value. (Paper No. 3, page 9; Paper No. 5, page 8.) Again, the Applicants respectfully contend that this motivation is not sufficient to sustain a *prima facie* showing of obviousness as not arising in one of the three possible sources thereof nor being clear and specific. (See MPEP § 2143.01; *In re Lee*, 277 F.3d at 1343, 61 U.S.P.Q.2d at 1433-34;

*In re Kotzab*, 217 F.3d at 1371, 55 U.S.P.Q.2d at 1317; *In re Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2d at 1616. Therefore, a *prima facie* showing of obviousness has not been made with respect to claim 13, and claim 13 is allowable under 35 U.S.C. § 103 over *Bereiter*, *Fujino* and *Nemirovsky*. Claim 20 has been rejected on the same basis as claim 13. Claim 20 has been rejected as reciting a program product including instructions for performing operations paralleling the steps of claim 13. For at least the reasons discussed in conjunction with claim 13, the Applicants also respectfully contend that claim 20 is allowable under 35 U.S.C. § 103 over *Bereiter*, *Fujino* and *Nemirovsky*.

Claim 15 is directed to the method of claim 13 and further including the steps of assigning a distribution lifetime value to each data distribution, and aborting the step of transferring the data in response to an unavailability of the connection for a time interval corresponding to the distribution lifetime. As discussed hereinabove, in conjunction with claims 13 and 10, the limitations of which are incorporated into claim 15, the Applicants respectfully contend that *Bereiter* and *Fujino*, alone or in combination, fail to teach these limitations incorporated in claim 15 by reference. Additionally, *Bereiter* and *Fujino* admittedly fail to disclose the express limitations of claim 15. (Paper No. 3, pages 9-10; Paper No. 5, pages 8-9.) The Examiner relies on *Nemirovsky* as disclosing the limitations of claim 15 (Paper No. 3, page 10; Paper No. 5, page 9.) *Nemirovsky* allegedly teaches the limitations of claim 15 in disclosing, at least implicitly, that a thread is made active by loading an available context frame with the threads program counter address and register values and assigning it an active priority and that when there are more active threads than streams available to execute threads, a number of threads up to the available number of context frames are made active and the remaining threads remain temporarily inactive (assigning a distribution lifetime value). (*See* Paper No. 3, page 10; Paper No. 5, page 9) (citing *Nemirovsky*, column 7, lines 17-25). With respect to the step of aborting the transferring step . . . , *Nemirovsky* allegedly discloses this limitation, at least implicitly, in disclosing that logic for determining and issuing priorities in various embodiments may be implemented in a variety of ways, including that priorities may be fixed by stream, but access to resources may be managed in addition to priority access, or, alternatively, priority by stream may

vary and access may be dynamically managed as well; criteria for both access and priority termination may be from varied sources as well, including on-chip statistics, functional unit utilization or branch prediction, according to data arrival and availability, or by input from off-chip and, and in combinations of these and other criteria. (*See* Paper No. 3, page 10; Paper No. 5, page 9) (citing *Nemirovsky*, column 5, lines 60 through column 6, line 16). Plainly, these teachings do not disclose a step of aborting a step of transferring data in response to an unavailability of a connection time. Moreover, as previously discussed with respect to *Nemirovsky*, *Nemirovsky* is directed to mechanisms for assigning priorities representing an instruction stream's claim to processing resources relative to competing instruction streams. The Examiner has provided no rationale based on reasoning from sound technical principles explaining how the teaching in *Nemirovsky* teaches or suggests the foregoing limitation of claim 15. *See* MPEP § 2144.03. With respect to a motivation for modifying or combining the references, the Examiner asserts that it would have been obvious so as to allow data to be deleted when a time period has expired. (Paper No. 3, page 10; Paper No. 5, page 9.) Again, for reasons analogous to those discussed hereinabove, the motivation for modifying *Bereiter* or combining *Bereiter* with *Nemirovsky* and *Fujino* are not sufficient to demonstrate a *prima facie* showing of obviousness. Consequently, for at least this reason and because the references alone or in combination have not been shown to teach or suggest all of the limitations of claim 15, the Applicants respectfully assert that a *prima facie* showing of obviousness has not been made with respect to claim 15. Consequently, claim 15 is allowable under 35 U.S.C. § 103 over *Bereiter*, *Fujino* and *Nemirovsky*.

Claim 22 has been rejected on the same ground as claim 15 as being directed to a program product including instructions for performing operations paralleling the method steps of claim 15. For at least the reasons discussed in conjunction with claim 15, the Applicants also respectfully assert that claim 22 is allowable under 35 U.S.C. § 103 over *Bereiter*, *Fujino* and *Nemirovsky*.

## VII. RESPONSE TO ARGUMENTS

The Examiner responds that the following factual arguments have been made by the Applicants in the Applicants' Reply Under 37 C.F.R. § 1.111 mailed on February 20, 2003 ("Applicants' First Reply"):

a. with respect to claim 1, the teachings in Bereiter by their express terms do not disclose a source data processing system for distributing data to one or more target data processing systems;

b. *Bereiter* expressly discloses that each endpoint machines includes a client component, which is a low cost low maintenance application that is dataless in the sense that the system management data is not cached or stored in a persistent manner on the client;

c. with respect to claim 5, the teachings in *Bereiter* by their express terms do [not]disclose a source data processing system distributing data in response to a request from at least one target data processing system; and

d. with respect claims 9 and 16, the teachings in *Bereiter* by their express terms [do not] disclose transferring data, and transferring results information via the second set of the one or more fanout nodes in response to the step of transferring the data.

The Examiner asserts that with respect to the alleged factual arguments a, c and d that the Applicants have not satisfied the requirements of 37 C.F.R. ¶ 1.111(b) in that the Applicants' amount to a general allegation that the claims define a patentable invention without specifically pointing out how the claims distinguish over the references. The Applicants respectfully disagree. As an initial matter, the Examiner's summarization of the Applicants' reply does not reflect the full scope of the Applicants' showings. The Applicants have addressed the teachings of the references as applied in the rejections of the claims, as evidenced by the Applicants' First Reply, and hereinabove. The Applicants also note that in several instances (see e.g. the rejections of claims 3, 13, 14, 20, 21 and 22) the claim elements are asserted to be implicitly taught by the references without any explanation or analysis as to how the reference or references implicitly teach the claim element. The Examiner is respectfully reminded that where the when an reference is complex or shows or describes inventions other than that claimed by the Applicants, the particular part relied upon must be

designated as nearly as practicable, and, if not apparent, the pertinence of each reference must be clearly explained. 37 C.F.R. § 1.104(c)(2). The initial burden is on the Examiner to present a case of unpatentability. MPEP § 2107.02 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

With respect to the Applicants' showing that *Bereiter* teaches that the endpoint machine client is "dataless" (b above), the Examiner asserts that nonetheless it would have been obvious to modify *Bereiter* to incorporate data caching in the endpoint. (Paper No. 5, page 10.) However, as has been often stated, an obvious analysis is not an invitation to retool the claimed invention using a selection of references as a kit of parts with the Application providing the blueprint. *In re Rouffet,* 149 F.3d 1350, 1357, 49 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998) (citations omitted). Where the proposed modification changes the principle of operation of the reference, there is no suggestion or motivation to make the modification. MPEP § 2143.01. It is not sufficient that the proposed modification would have been within the capability of one of ordinary skill in the art at the time of the invention. *Id.*

The Applicants note that the grounds of rejection of claims 1-5, 7-22 in the instant Office Action, Paper No. 5, are identical to the respective grounds set forth in the previous Office Action, Paper No. 3. The Applicants further note that the Examiner's response has not addressed the Applicants arguments with respect to claims 2-4, 6-8, 10-16 and 17-22 at all. The Examiner is respectfully reminded that where the Examiner repeats a rejection traversed by the Applicants, the Examiner should take note of the Applicants argument and answer the substance of it. MPEP § 707.07(f).

## VIII. CONCLUSION

As a result of the foregoing, it is asserted by Applicants that the remaining Claims in the Application are in condition for allowance, and respectfully request an early allowance of such Claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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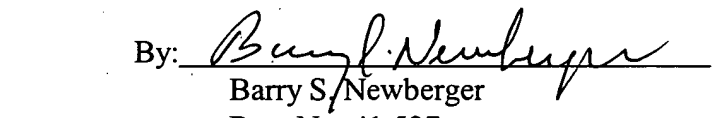
By: 
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